

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

STATE OF OREGON, )

Plaintiff, )

V. )

SAMUEL TROY LANDIS, )

Defendant. )

Case No. 6:23-cr-00330-MC

December 12, 2023, 9:08 AM

## ORAL ARGUMENT

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL J. MCSHANE

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

FOR THE PLAINTIFF:

DAVID RUSSELL WILSON  
Marion County District Attorney  
555 Court Street NE  
Suite 5232  
Salem, OR 97301

FOR THE PLAINTIFF:

ASHLEY RENEE CADOTTE  
2905 NE Broadway Street  
Portland, OR 97232

FOR THE DEFENDANT:

DAVID H. ANGELI  
Angeli Law Group LLC  
121 SW Morrison Street  
Suite 400  
Portland, OR 97204

FOR THE DEFENDANT:

AMANDA ILIMA ALVAREZ THIBEAULT  
Angeli Law Group LLC  
121 SW Morrison Street  
Suite 400  
Portland, OR 97204

FOR THE DEFENDANT:

AMY ELIZABETH POTTER  
Angeli Law Group LLC  
121 SW Morrison Street  
Suite 400  
Portland, OR 97204

FOR THE DEFENDANT:

MICHELLE HOLMAN KERIN  
Angeli Law Group LLC  
121 SW Morrison Street  
Suite 400  
Portland, OR 97204

COURT REPORTER:

Kendra A. Steppler, RPR, CRR  
United States District Courthouse  
District of Oregon  
405 E. 8th Avenue, Room 2100  
Eugene, OR 97401

\* \* \*

1 THE COURT: Hi. Please remain seated, folks. If  
2 you'll give me just a moment to set up. Thank you for your  
3 patience.

4 All right. Let's go on the record I'll have Ms. Pew call  
5 the case.

6 THE COURTROOM DEPUTY: The United States District  
7 Court for the District of Oregon is now in session, the  
8 Honorable Michael J. McShane presiding.

9 Now is the time set for 23-00330, State of Oregon v.  
10 Samuel Troy Landis, oral argument.

11 THE COURT: All right. Let's have the attorneys for  
12 the Plaintiff introduce themselves first. It's always hard for  
13 me to maybe figure out who's the plaintiff and who's the  
14 defendant in this case. How about for the Prosecution?

15 MS. CADOTTE: Good morning, Your Honor. Ashley  
16 Cadotte -- is this on? Can you hear me okay?

17 THE COURTROOM DEPUTY: No.

18 THE COURT: I don't think we have it on. Sorry.

19 We do now.

20 MS. CADOTTE: Okay. Ashley Cadotte appearing on  
21 behalf of the State.

22 THE COURT: All right. Thank you, Ms. Cadotte.

23 MR. WILSON: David Wilson also appearing on behalf of  
24 the State.

25 THE COURT: All right. Thank you, Mr. Wilson.

1 And then for Mr. Landis?

2 MS. POTTER: Thank you, Your Honor. Amy Potter on  
3 behalf of Mr. Landis, who is present at counsel table.

4 THE COURT: Hi, Mr. Landis.

5 MS. POTTER: Behind me is Dave Angeli and Amanda  
6 Thibeault. And this is Michelle Kerin. I'll introduce for  
7 her.

8 THE COURT: Okay. So -- thank you.

9 Ms. Potter, maybe you could begin. Really, it's your  
10 motion for removal. It's set for an evidentiary hearing. And,  
11 I guess, my first question is the scope of the hearing. It  
12 doesn't seem like the facts are particularly in dispute. It's  
13 really a pretty narrow set of findings I would have to make  
14 today. But what do we need to do today to effectuate a  
15 decision?

16 MS. POTTER: Thank you, Your Honor. And I apologize.  
17 We did send an email to the Court yesterday, but I don't think  
18 the Court received it, where we explained that -- I conferred  
19 with the State. We have reached an agreement that there will  
20 be no witnesses. And we've agreed to stipulate to certain  
21 exhibits.

22 So we are stipulating -- or the State's stipulating --  
23 sorry, I'll slow down -- to the three exhibits that were  
24 submitted in support of our reply. So the Court already has  
25 those under seal. Those are the DEA op plan for the

1 surveillance, the DEA policy, and the grand jury testimony for  
2 the first day.

3 Yesterday, we also filed Exhibit 4 under seal, which is  
4 the accident reconstruction report. And if the Court doesn't  
5 have that, I have a copy.

6 THE COURT: I don't believe I have that. I did also  
7 receive a video that I did watch.

8 MS. POTTER: And so not to take the State's thunder,  
9 but they filed two exhibits yesterday. They filed the video  
10 for the Court.

11 THE COURT: I have seen that.

12 MS. POTTER: And they also filed Exhibit 1, which is  
13 a prepared statement that Mr. Landis' former attorney submitted  
14 to law enforcement. My copy is marked up. Do you have that,  
15 Your Honor?

16 THE COURT: I don't have a hard copy of it in front  
17 of me.

18 THE COURTROOM DEPUTY: I can --

19 THE COURT: If we have one, it would be helpful.

20 MS. POTTER: I think --

21 THE COURT: Let me just tell you, sending them and  
22 giving us hard exhibits for a hearing -- kind of two different  
23 things. For me to have them in front of me, especially since  
24 I've been literally working out of Portland, Pendleton, and  
25 Medford for the last two weeks --

1 MS. POTTER: I apologize, Your Honor. I do have one  
2 marked that I can hand --

3 THE COURTROOM DEPUTY: That was Exhibit 1?

4 MR. WILSON: I have a hard copy.

5 MS. POTTER: Okay. Thank you. I just didn't want  
6 to --

7 THE COURT: Okay. Thank you.

8 MS. POTTER: And so those are the State's exhibits.  
9 And we are not objecting to those two exhibits either.

10 THE COURT: Okay. Those exhibits will be received.

11 MS. POTTER: So, with that, we think there are more  
12 than sufficient facts. And, I guess, actually, at this point,  
13 I would back up, Your Honor, and say we don't think there's  
14 really much in a way of a factual record that needs to be made.  
15 I will admit to the Court that the reference to an evidentiary  
16 hearing in the statute is actually quite confusing.

17 THE COURT: It is.

18 MS. POTTER: And even made more confusing -- and, you  
19 know, we will -- we were victims -- or we did this, as well, is  
20 we end up citing a lot of cases that deal with the next step of  
21 the process, which is a motion --

22 THE COURT: I noticed that, as well.

23 MS. POTTER: -- to dismiss. Because --

24 THE COURT: I think in your motion, it almost sounded  
25 like you were asking for kind of a joint hearing, which is

1 fine, if folks are prepared to argue both before you get past  
2 phase one.

3 MS. POTTER: I don't think -- I wouldn't want to  
4 put -- I think the State wants to put on evidence for that. So  
5 I think we --

6 THE COURT: Okay.

7 MS. POTTER: We were able to get to this point where  
8 I think we agree there's no evidence that needs to be offered  
9 today, Your Honor. We're certainly prepared. And, I will say,  
10 we did that, in part, because that's kind of how the Dotson  
11 case did it. The Dotson case skipped right ahead -- had no  
12 hearing on the removal.

13 THE COURT: Right.

14 MS. POTTER: But then there's the Wyoming case where  
15 they say, well, you are actually supposed to have some sort of  
16 hearing, unless everyone waives it. So it's clear a hearing  
17 needs to happen. We were able to stipulate around the  
18 evidence. So that is permissible. I don't think the Ninth  
19 Circuit has definitely held that. But the only circuit to have  
20 addressed it has. So I think we're in the appropriate place  
21 now where the Court needs to make the basic findings on  
22 removal.

23 And I -- you know -- going back to the motion to dismiss  
24 and removal kind of blending together, they are actually very  
25 different, and the standard is very, very different. And I

1 think one of the key cases on that is the Heinze case out of  
2 Georgia. And I think that's a really important one for this,  
3 because they make a lot of the same arguments -- the State  
4 there -- that the State is here, saying, look, there's no  
5 colorable defense because there was a violation of the Fourth  
6 Amendment, or there's no acting under color of law. And what  
7 Heinze says is that's a decision for another day. We'll get  
8 there, but we're not going to get there for removal.

9 So, with that, I'm happy to either walk through the three  
10 prongs of removal or just answer the Court's question, but I  
11 think, to the extent we have proffered evidence in our  
12 pleadings, we have met the standard. To the extent the Court  
13 wanted additional information on why we believe particularly  
14 the colorable federal defense is available, we've offered some  
15 additional facts in terms of the sworn Grand Jury testimony,  
16 and we think we've met our burden. But I would be happy to  
17 walk through it more.

18 THE COURT: Well, let's maybe check in with  
19 Ms. Cadotte. In terms of the scope of this proceeding, and any  
20 other exhibits that need to be introduced into evidence, any  
21 other testimony, are you kind of in step with Ms. Potter, or is  
22 there more that you need to add?

23 MS. CADOTTE: Your Honor, I am in step with  
24 Ms. Potter. I do believe there just needs to be a finding made  
25 today in regards to the removal. And depending on that, we



1 would set a future hearing date either with the Court or remand  
2 back to state.

3 THE COURT: Okay. Well, why don't I hear from you  
4 first, then, on the issue of removal. I think -- you know --  
5 I'm looking at some cases that -- with some pretty similar  
6 behavior, I would say, that were ultimately removed, if not  
7 dismissed.

8 MS. CADOTTE: I agree, Your Honor. And I think the  
9 main one that has been cited in both Defense and the State's  
10 motions is California v. Dotson.

11 THE COURT: Right.

12 MS. CADOTTE: That is, I think, the most recent case  
13 involving a traffic violation with an on-duty federal agent.  
14 And it's involving somewhat similar circumstances to what's  
15 before the Court today. However, from the State's perspective,  
16 I would submit that the distinguishing factors between Dotson  
17 and the circumstances before the Court today are what would  
18 allow remand, or require remand, back to the State.

19 Specifically, in Dotson, the order -- which I don't like  
20 to reinvent the wheel, so we are relying very heavily on the  
21 removal order and the research that that judge did down in the  
22 Ninth Circuit in California. And that judge found that the  
23 standard is that exigency has to be present when it's involving  
24 a traffic violation for removal to apply.

25 In Dotson, the exigency presented in that matter is

1 significantly different than what's before the Court today.  
2 Specifically, it was highlighted that the agent was separated  
3 from his team in a dark and unfamiliar area. They were  
4 planning on arresting their target. Communications between  
5 that agent and the rest of his team were compromised. And  
6 there was a lack of visual confirmation of the whereabouts of  
7 the target.

8 That is very different from the matter before the Court  
9 today. This is a situation in which the primary goal and  
10 purpose of the surveillance that was being conducted was to  
11 gather additional intel. There was no purpose or plan for  
12 effectuating an arrest, effectuating a raid, a search warrant.  
13 None of those standards were applicable here. Not only that,  
14 there was more than enough agents available to maintain visual  
15 on the target.

16 Defense --

17 THE COURT: But doesn't Dotson talk a little bit  
18 about his hindsight approach and that -- you know -- what the  
19 idea of exigency means is if an officer is facing a situation,  
20 where he has to make a quick or even split-second decision on  
21 how to act, the whole idea of removal and giving them the  
22 immunity defense is to not chill their ability to make these  
23 quick decisions.

24 MS. CADOTTE: I completely agree with your reading of  
25 Dotson. And it would be a chilling effect, but also to what

1 end? When is an agent able to apply the removal statute, and  
2 when are they just acting outside of the scope? So in this  
3 situation, really, the crux of the question is, was Mr. Landis'  
4 running the stop sign done to effectuate or further this  
5 circumstance of surveilling a target? What were the issues  
6 presented there that created his need to run the stop sign?

7 THE COURT: Right. So let me ask you this: Because  
8 I know certain municipalities and law enforcement agencies put  
9 in place certain policies, in some ways, to stop kind of these  
10 events; for instance, high-speed chases for misdemeanors; you  
11 know, car chases involving unauthorized use of a vehicle. I  
12 have some recollection that some cities have attempted to stop  
13 these kinds of police -- what were always traditional police  
14 behaviors -- in order to save lives.

15 Is there any policy that's dictating what Officer Landis  
16 could or could not do, in this case, around the traffic laws?

17 MS. CADOTTE: I would actually refer to Defense  
18 Exhibit 2. That is the DEA policies and procedures for use of  
19 government vehicles. Specifically, page 7 addresses operating  
20 safety. And on page 7 of 12, it states that, "In certain  
21 enforcement situations, agents may have to violate traffic or  
22 parking laws; however, safety of the public and the agent have  
23 higher priority than any enforcement activity. Traffic and  
24 parking laws will not be violated to the detriment of public  
25 and personal safety."

1 THE COURT: Okay.

2 MS. CADOTTE: And so here -- I would submit that the  
3 balance here is, right now, the surveillance was occurring.  
4 And has Your Honor had a chance to view the video? I believe  
5 you said that.

6 THE COURT: I did.

7 MS. CADOTTE: It's clearly in a residential area. It  
8 is a rainy day. There are other people traveling on the  
9 roadways. So that is something that has to be taken into  
10 consideration when weighing the exigency of the purpose of this  
11 surveillance. And I think what I would offer as being very  
12 persuasive for non-removal is the fact that, both in Grand Jury  
13 and in his written statements, Agent Landis did not say that he  
14 ran the stop sign to effectuate or continue the pursuit,  
15 necessarily. That he had to run that stop sign to effectuate  
16 his duties.

17 And, in fact, if you look at -- it's Exhibit 3 for  
18 Defense -- is the testimony of multiple agents that were part  
19 of the surveillance that day. I believe at least five -- six  
20 including Mr. Landis -- each one of them said there was no  
21 imminent danger, there was no pursuit, there was no urgency.  
22 That is what distinguishes the facts before the Court today  
23 from that in Dotson.

24 THE COURT: Okay. Anything else you want to tell me?

25 MS. CADOTTE: No, Your Honor. Thank you.

1 THE COURT: All right.

2 Then in response? Especially, Ms. Potter, focus on --  
3 there is a policy with the DEA about putting public safety  
4 first when making decisions.

5 MS. POTTER: Yes, Your Honor. And I think that goes  
6 to the heart of the removal and the issue of -- the hindsight  
7 issue that the Court talked about.

8 I think if you look at Special Agent Landis' testimony, he  
9 was approaching the stop sign, he slowed, he thought he could  
10 make it through safely. We understand that that's not what  
11 happened, and a tragedy occurred. So, you know, we're not  
12 going to -- we're not arguing against that. But, at the time,  
13 did he think he could do it for the purpose of keeping up with  
14 his team?

15 And I understand what they're saying: This wasn't  
16 urgency; this wasn't lights and sirens. But I think it's  
17 pretty important when -- it's actually in Detective McCarley --  
18 who is a Salem PD -- TFO's testimony. He's describing  
19 surveillance and how necessary it is that you have a lot of  
20 cars. That you don't -- even if you're the sixth car back, in  
21 surveillance, is actually really important, because people get  
22 lost, or they lose stuff.

23 And he was asked about going over the speed limit. And he  
24 says, well, yes, you have to speed to catch up. You have to  
25 violate. And then he clarifies: But it's not like when you're

1 in a patrol car.

2 And, I think, when you start looking at the testimony that  
3 these officers -- and they're asked about urgency -- they're  
4 all saying we weren't lights and sirens. We weren't going  
5 100 miles an hour like they were in Dotson. And we weren't  
6 saying we were allowed to. But every single one of them admits  
7 to violating the traffic laws.

8 In fact, Special Agent Hoagland runs that same stop sign a  
9 few moments before Special Agent Landis. Now, he turns, and  
10 obviously there was no accident -- he caused no accident -- but  
11 he made the exact same decision that he could safely pass that,  
12 because he wanted to catch back up. They're going with a  
13 purpose.

14 The notion that this surveillance, just because it wasn't  
15 going to end in an arrest, wasn't significant, didn't create  
16 issues. And it's not just the issues. And I acknowledge --  
17 and the Court's right -- you know, there are rules. DEA -- he  
18 was not authorized to go 100 miles an hour at this point. And  
19 maybe hindsight we'd say that wasn't -- well, I mean, we will  
20 say, in hindsight, that was the wrong move to go through the  
21 stop sign. But what they train these agents to do in these  
22 surveillance situations is analyze it to the best of their  
23 ability. And that's what he did. And he reasonably thought he  
24 could do this.

25 We know a lot of things now. We know about the hill

1 coming down and how fast the bicyclists go. We know about the  
2 hedge that made it really hard for him to see. But as you'll  
3 see from Special Agent Landis' testimony, he hadn't been to  
4 that area. You'll see other officers -- and, I'm sorry, I  
5 don't have the name of -- who actually know that area quite  
6 well. It's notorious in Salem, at least at that point, before  
7 the hedges were cut, for being kind of a dangerous area.

8 Are those all things in hindsight? But what does Heinze  
9 tell us? That's not -- that's not today. The question is  
10 removal. And the question is whether -- does he have a defense  
11 to say, "I was acting reasonably. I was following DEA policy.  
12 I thought I was putting safety first." And, unfortunately,  
13 like in Dotson, that was a mistake. Hindsight tells us  
14 differently.

15 I would also say that in the Broughton case -- it's Hawaii  
16 v. Broughton -- which is a very, very strange case involving an  
17 FPS -- a Federal Protective Service officer -- who is traveling  
18 home from work, and is being followed, and decides, on his own,  
19 to execute a traffic stop, which was -- it was a very strange  
20 case, because I think most people would not expect an FPS  
21 officer to, on his own volition, do a traffic stop. And it  
22 turns out, that's actually a violation of FPS policy.

23 THE COURT: Right.

24 MS. POTTER: But what the Court in that case says is,  
25 well, yes, but technically he's authorized to do it. It's

1 against policy, but, as a law enforcement, he's allowed. And,  
2 here, today, we're doing removal, and removal is proper.

3 So, I think, again -- I understand the point. But I think  
4 these arguments -- and some of the arguments we made in our  
5 brief are crossing into the next step, which is --

6 THE COURT: Right.

7 MS. POTTER: -- a motion to dismiss. Does he have a  
8 colorable defense? And, frankly, Heinze and several other  
9 cases say, just saying, we're going to argue it's reasonable,  
10 is sufficient. But we think we've done more than that. And I  
11 want to be clear about that. But --

12 THE COURT: So your argument -- this isn't the time  
13 to start worrying about the level of exigency and whether an  
14 emergency has occurred. I mean, if you look at some of these  
15 cases -- the helicopter case, for example -- where it's clear  
16 he thought an emergency was going on, and that somebody who had  
17 just shot his partner was escaping. I mean, do we have to  
18 start getting into that issue now, or does that all go to that  
19 overall issue of reasonableness, ultimately?

20 MS. POTTER: And that's the Clifton case. And I  
21 think that goes to the overall issue of reasonableness. And I  
22 think Clifton is -- you know -- takes a very expansive view of  
23 what -- color of authority. And that's, frankly, what Dotson  
24 relies on, quite heavily. So, yes, I agree with the Court.  
25 And I think part of the difficulty -- and I think the State



1 probably suffered from the same difficulty -- is so many of the  
2 cases involve that next step as opposed to this step.

3 THE COURT: Right.

4 MS. POTTER: So do I think we've crossed the bar?  
5 And, you know, I think the key is -- and the Supreme Court said  
6 this -- is the reason for removal is to allow Special Agent  
7 Landis to have his federal defense heard in federal court.  
8 That's the purpose of removal. That's why we're here.

9 THE COURT: But that federal defense is not a jury  
10 question. Or -- or can it be?

11 MS. POTTER: Your Honor --

12 THE COURT: This is more out of curiosity. Because  
13 it seems like -- they seem to be suggesting this is a matter of  
14 law for the Court when we read these cases, but nobody's ever  
15 said this is a -- reasonableness is always a factual  
16 determination.

17 MS. POTTER: Well, it is interesting. There is one  
18 case -- and I didn't cite it in the brief. But it's Arizona v.  
19 Files, F-I-L-E-S, 2013 Westlaw 4834024. And that's the actual  
20 cite for the removal opinion.

21 And for the basic facts, the federal officer trapped his  
22 neighbor's dog and claimed, as a Department of Agriculture  
23 employee, he was permitted to do so. He actually earned  
24 removal. But, in the next stage, the court denied the motion  
25 to dismiss and said, "I don't think this is reasonable. I'm

1 not going to make this determination," and sent it to a jury  
2 trial.

3 That was the only court case where I found where that  
4 court said he wasn't allowed to present his defense. I'm  
5 not -- you're asking a question, so I'm telling you. I have  
6 not researched this to the ends of the earth. And I'm not  
7 prepared to say we wouldn't be able to. Because I do think  
8 reasonableness is an argument for a jury. But I think the  
9 Court will also see that a significant number of these cases  
10 are decided at that stage. And so --

11 THE COURT: Right.

12 MS. POTTER: -- it's hard to know. I will be -- if  
13 we get to there, I guarantee to the Court I will be prepared to  
14 answer as much as I can on that point. But I think the  
15 question today is just whether we get to that step.

16 And, again, one thing I did find interesting about Arizona  
17 v. Files is they -- they had the trial in federal court. So  
18 even if you lose the motion to dismiss, you get to stay in  
19 federal court as a federal officer or agent. And that's the  
20 point of the removal statute. And that's why we're here. And  
21 that's why we made these arguments.

22 THE COURT: Okay. Thank you, Ms. Potter.

23 Anything else from the Government?

24 MS. CADOTTE: Just briefly, Your Honor.

25 With all due respect, I think we're assuming facts that

1 are not in evidence, nor are they outlined in any of the  
2 motions. Agent Landis never said, under Grand Jury testimony  
3 or in his responses written and provided to the State, that he  
4 ran the stop sign for the purpose of effectuating and  
5 furthering his surveillance. Quite frankly, he says he saw it,  
6 and he thought he made it through. He didn't say that this was  
7 required, this was necessary, I took all of these things in my  
8 policy in consideration. That is what is different in the  
9 matter before the Court today than the ones that everyone has  
10 cited.

11 There, they're able to say: I had to make this decision.  
12 I had -- this conduct was pursuant to this reason -- this  
13 exigency. Here, there's been no showing, whatsoever, that the  
14 conduct of running the stop sign was made in furtherance of,  
15 that it was necessary for him, or that he even believed he had  
16 to run the stop sign to catch up. That is not anywhere in  
17 evidence before the Court today.

18 THE COURT: Well, it may be for another day.

19 I am going to allow the removal. I'm going to deny the  
20 motion to -- in opposition to removal. I am finding that  
21 Mr. Landis is a federal officer pursuant to Section 1442(a)(1).  
22 Mr. Landis is a sworn federal enforcement officer with the DEA.  
23 At the time of the incident, he was on duty performing a  
24 surveillance operation. He satisfies the federal officer  
25 requirement.

1        Mr. Landis was acting under the color of his office. The  
2 element is satisfied by showing Mr. Landis' actions, which must  
3 be performed as part of his official duty, constitute the basis  
4 for the State's prosecution.

5        Mr. Landis is -- as a DEA agent -- is tasked with  
6 enforcing the nation's drug laws. Performing surveillance is  
7 part of that enforcement. He was operating a Government-issued  
8 vehicle performing surveillance of a fentanyl trafficker, which  
9 is his -- part of his official duty -- when the accident  
10 occurred. So he was clearly acting under the color of his  
11 office.

12        I'm not saying every action he's taking is expressly  
13 authorized, but the issue ultimately will come down to whether  
14 his actions were reasonable in light of the circumstances.

15        Mr. Landis does have a colorable federal defense. He does  
16 not have to prove his federal defense will win. He simply must  
17 show a colorable federal defense. Here I'm citing the Acker  
18 case. Garner defines "colorable" as having at least a prima  
19 facie aspect of justice or validity. That's under Garner's  
20 Dictionary of Legal Usage.

21        Mr. Landis asserts immunity under law pursuant to  
22 21 USC Section 885, which states that no civil or criminal  
23 liability shall be imposed by virtue of this subchapter upon  
24 any duly authorized federal officer lawfully engaged in the  
25 enforcement of this subchapter who shall be lawfully engaged in

1 the enforcement of any law or municipal ordinance relating to  
2 controlled substances.

3 So Mr. Landis does have an immunity defense that would  
4 protect him from State prosecution if he can show his actions  
5 were authorized by law, and he did not do more than what was  
6 necessary and proper.

7 Federal agents' actions are necessary and proper if the  
8 agent subjectively believes his actions were justified and the  
9 agent's belief is objectionably reasonable.

10 Courts have recognized the general rule that errors of  
11 judgment in what one conceives to be his duty will not alone  
12 serve to create criminal responsibility of a federal officer.  
13 Here I'm citing Clifton v. Cox.

14 So I'm assuming then that Mr. Landis' attorneys will file  
15 a motion to dismiss, and we will have a hearing to determine  
16 the broader issue of whether the Court can step in and grant an  
17 immunity defense, or whether there is a jury question remaining  
18 on that issue.

19 And those are hard issues. Even in qualified immunity,  
20 there's cases where the court has to make some factual -- has  
21 to let a jury make some factual findings before it can move  
22 forward. And sometimes not. Sometimes immunity is really the  
23 province of the court. Obviously, you know, in ten years on  
24 the federal bench, this is the first time I've heard of removal  
25 to federal court for a state prosecution in order to qualify

1 for a federal defense. So it's something we need to take a  
2 little bit of a look at in terms of whether it is a court  
3 question, solely, or whether it is a jury issue, in terms of  
4 what is reasonable under those set of circumstances.

5 But we'll leave that for another day. Is there some  
6 thought on -- should I just have you folks confer on a briefing  
7 schedule on that and get back to us?

8 MS. CADOTTE: Yeah.

9 MS. POTTER: That's fine, Your Honor.

10 THE COURT: Okay. I'll have you folks confer on what  
11 would ultimately be the motion to dismiss, followed by now the  
12 defendant, in this case, and we'll go from there.

13 MS. POTTER: Your Honor, prior to this hearing, I was  
14 contacted by Pretrial Services, because they were unclear as to  
15 what the steps would be.

16 THE COURT: Yes.

17 MS. POTTER: And I told them that until the Court  
18 made a decision, we did not know. I think they were hoping the  
19 Court would order him to Judge Kasubhai. Either the Court  
20 would hold a detention hearing or order him to Judge Kasubhai.  
21 I actually don't believe he needs an initial appearance,  
22 because he's appeared before with us representing him in state  
23 court.

24 I'm happy to follow whatever procedure, but, at this  
25 point, with the granting of removal, he comes under the

1 supervision of Pretrial.

2 THE COURT: All right. When did the indictment go  
3 out in the state court case?

4 MS. POTTER: It was filed September 6th, 2023.

5 THE COURT: Okay. I mean, I'm assuming, since that  
6 time, he's been out in state court on his own recognizance.

7 MS. CADOTTE: Yes, Your Honor.

8 THE COURT: Is the Government asking for anything  
9 additional in terms of detention?

10 MS. CADOTTE: No, Your Honor.

11 THE COURT: All right. Well, I mean, this is odd,  
12 because there's really no first appearance in federal court,  
13 because he was arraigned in state court. This case has now  
14 been removed to federal court. He will continue out on his own  
15 recognizance. We'll set a trial date for -- because we are  
16 required under the federal rule to set trial dates -- for  
17 May 1st or so.

18 Char, it's just a backup date.

19 THE COURTROOM DEPUTY: Yeah.

20 THE COURT: I will find that the interests of -- I  
21 will find that the interests of justice outweigh the interest  
22 of the Defendant and the public to a speedy trial. And we will  
23 exclude time until that date based on the fact that the parties  
24 do need to prepare for a motion to dismiss. Obviously the  
25 motion to dismiss would toll any speedy trial issues.

1           The parties will confer and report back to the Court  
2 within a week a briefing schedule for the motion to dismiss.  
3 And once we get that briefing schedule, we will set a hearing,  
4 evidentiary or otherwise, on the motion to dismiss.

5           Is there anything else, then, we need to discuss?

6           MS. CADOTTE: Not from the State, Your Honor. Thank  
7 you.

8           THE COURT: All right.

9           MS. POTTER: Not from the Defense, Your Honor.

10          THE COURT: All right. Well, if it goes to trial, we  
11 can always -- make sure you're brushing up on your Federal  
12 Rules of Criminal Procedure. But we can always talk about that  
13 a lot more down the road.

14          Thank you, folks. I really appreciate your time.

15          MS. POTTER: Thank you, Your Honor.

16          MR. LANDIS: Thank you, Your Honor.

17          THE COURT: Interesting issue for sure.

18  
19               (The proceedings adjourned at 9:39 AM.)  
20  
21  
22  
23  
24  
25



C E R T I F I C A T E

State of Oregon v. Samuel Troy Landis

Case No. 6:23-cr-00330-MC

Oral Argument

December 12, 2023

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR, CRR  
Official Court Reporter

Signature Date: 12/15/2023